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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,145	05/31/2001	Brian Fields	CC-3184	9252

7590 09/21/2004

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EXAMINER

MAI, TRI M

ART UNIT PAPER NUMBER

3727

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/857,145	Applicant(s) FIELDS, BRIAN	
	Examiner Tri M. Mai	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

1. Legends A and B should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke, III in view of Carnaudmetal (WO9637414), and further in view of either Schmalbach (EP432659), or the admitted prior art. Clarke, III teaches a container having a center panel that can be made with various sizes (col. 2, line 24), and an area of less than .5 square inches. Clarke, III meets all claimed limitations except for the diameter of the center panel being less than 1.835 and the ratio aspect between 1.3 and 1.7. Carnaudmetal teaches that it is known in the art to provide various diameters for a center panel (Table 6). It would have been obvious to one of ordinary skill in the art to provide the diameter of the center panel being less than 1.835 in Clarke, III as taught by Carnaudmetal to provide the desired end wall for the container.

With respect to the opening ratio, Schmalbach teaches that it is known in the art to provide an opening about 1.5 (31mm/20mm about the opening in Fig. 1). It would have been obvious to one of ordinary skill in the art to provide the opening with a ratio about 1.5 in Clarke, III as taught by Schmalbach to provide the desired opening for the container.

Furthermore, the specification discloses an opening with a ratio about 1.47 (page 8, line 13). It would have been obvious to one of ordinary skill in the art to provide an opening with a ratio about 1.5 in Clarke, III as taught by the admitted prior art to provide the desired opening for the container.

Even to the degree it is argued that the flow rate is not being taught by the applied references as set forth above. The patentability of a product does not depend on its method design of such product. If the product in is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different design process.

3. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Schmalbach (EP432659) or the admitted prior art in view of Clarke, III, and further in view Carnaudmetal (WO9637414), and further in view of). It would have been obvious to one of ordinary skill in the art to use the standard size openings of less than .5 square inches in opening by Schamlbach or the admitted prior art as taught by Clarke, III to provide the desired opening

Carnaudmetal teaches that it is known in the art to provide various diameters for a center panel (Table 6). It would have been obvious to one of ordinary skill in the art to provide the diameter of the center panel being less than 1.835 to provide the desired end wall for the container.

With respect to the opening ratio, Schmalbach teaches that it is known in the art to provide an opening about 1.5 (31mm/20mm about the opening in Fig. 1). It would have been obvious to one of ordinary skill in the art to provide the opening with a ratio about 1.5 in Clarke, III as taught by Schmalbach to provide the desired opening for the container.

Furthermore, the specification discloses an opening with a ratio about 1.47 (page 8, line 13). It would have been obvious to one of ordinary skill in the art to provide an opening with a ratio about 1.5 in Clarke, III as taught by the admitted prior art to provide the desired opening for the container.

Even to the degree it is argued that the flow rate is not being taught by the applied references as set forth above. The patentability of a product does not depend on its method design of such product. If the product in is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different design process.

Response to Arguments

4. Applicant's arguments and Mr. Brian Fields filed 05/18/04 have been fully considered but they are not persuasive. Applicant argues that the Clarke reference teaches away from the claimed configuration. It is noted that the teachings in Clarke includes the teachings of "standard sizes" openings:

A "standard size opening" is one having an area less than about .5 square inch and is typically within the range of 0.40-0.47 square inch.

Clearly, having a range within "0.40-0.47 square inch" would be considered as standard. Furthermore, one of ordinary skill in the art would know how to apply these standards to the specific ratio as taught by Schmalbach. With respect to the graph, the improvement of flow rate is a direct result of the aspect ratio, and these aspect ratio is taught by either Schmalbach or the admitted prior art with a ratio about 1.47 (page 8, line 13). Furthermore, it would have been obvious to one of ordinary skill in the art to use the ratio disclosed (admitted prior art with a ratio about 1.47) or Schmalbach with the "standard size opening".

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai 
Primary Examiner
Art Unit 3727